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Steven Viavant

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HICKMAN PALERMO TRUONG & BECKER/ORACLE

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SUITE 550

SAN JOSE, CA 95110-1083

EXAMINER

DIVECHA, KAMAL B

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/945,160	Applicant(s) VIAVANT ET AL.	
	Examiner KAMAL B. DIVECHA	Art Unit 2451	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 86-89,92-119,129-132,135-162 and 172-175 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 86-89,92-119,129-132,135-162 and 172-175 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>200081023</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Action is in response to communications filed 12/10/08.

Claims 86-89, 92-119, 129-132, 135-162, 172-175 are pending.

Claims 1-85 were cancelled in response filed 7/23/08.

Claims 90-91, 133-134 are cancelled in response filed 12/10/08.

Claims 120-128, 163-171 are withdrawn in response filed 12/10/08.

Election/Restrictions

Applicant is response filed confirmed the election of group I in response to restriction/election requirement.

Response to Arguments

Applicant's arguments filed in the communications above have been fully considered but they are not persuasive.

In the communications, applicant argues in substance:

- a. The rejection of claims 91, 98, 134, 141 and 142 under 35 USC 112, first paragraph (remarks, pg. 20-21).

In the remarks, applicant asserts that one embodiment of lazy reporting or one such embodiment on page 26 of the specification supports the claimed features.

Examiner disagrees.

In view of specification page 26, 44 and 45, the cookie is explicitly sent in response to a request initiated by the browser. The request is for dummy file and/or image file. This portion of

Art Unit: 2451

the specification fails to suggest that the request is not initiated by the user, and more specifically, it does not suggest that “it is the code inserted into the original item, not the user, that causes the browser to automatically send the cookie with a request for an image” as alleged by the applicant.

As per applicants argument pertaining to claim 98 and 141, Examiner disagrees with applicant analysis, more specifically, that “**since page 38 teaches** a step of determining, while a page is loading, that the client does not store a cookie for the application, **page 38 therefore** teaches “while loading the modified initial item, determining that the client device does not store data indicating a request time for the initial item”.

A cookie may or may not store a request time for the initial item, e.g. in an event user does not request further pages. As such, the implication relied on by the applicant is improper.

At best, the specification including page 41, teaches the determination of existence/non-existence of a cookie.

b. Claim rejections based on 103 (remarks, pg. 22-32).

Claim 86

In the response filed, applicant incorporated the subject matter of claim 91 into the independent claim 86, which was rejected under “official notice” in the previous non-final action dated 9/15/08, see pg. 18-19.

In remarks, e.g. pg. 27-28, applicant traverses the official notices taken by the examiner. Although applicant fails to clearly challenge the official notice, the traversal is taken as a challenge to the official notice rather than admitted prior art.

Art Unit: 2451

Examiner herein provides evidence with respect to the challenged subject matter, which appears in the current one or more independent claims.

Applicant should also note the usage of new art does not constitute new grounds of rejection. See MPEP 2144.03 D.

In the submission filed, e.g. pg. 22, applicant asserts that neither Elnozahy nor Russell teaches a step "...wherein sending a cookie to at least one of the server...occurs without a user at the client device requesting a new item". The Argument is moot in view of challenged official notice.

In the remarks, e.g. 20-21, applicant has provided evidence that such a step is implemented through an insertion of a code into a page that automatically requests another page from the server without user initiating the another page.

Claim 87

Applicant in response filed asserts that Elnozahy and Russell does not teach "...measuring a number of events, the events including at least a plurality of cursor events, focus events or change events.

Examiner disagrees.

More specifically, applicant submits that "a computer may implement the method of claim 87 to measure the number of mouse movements between the time a page is loaded and the time a next page is loaded", e.g. pg. 23. Applicant also asserts that "claim 87 ...measure **of the** events...Elnozahy teaches to **measure metrics** such as response time in response to a number **of clicks**, one implementing the method of claim 87 might measure the actual number of clicks".

Art Unit: 2451

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies as set forth above are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Moreover, on the same page of remarks, i.e. pg. 23, applicant **admits** that Elnozhy's script...such that it gets **executed every time a specific event occurs**...Elnozhy measure metrics...to a number **of clicks**...

In other words, Elnozhy measures a number of events, such as one or two of the events, the events including at least a plurality of cursor, focus or change events.

Claim 98

Applicant's arguments with respect to claims 98, 172-175 have been considered but are moot in view of the new ground(s) of rejection, as necessitated by the substantial amendments, more specifically, due to deletion of the claim dependency (previous claim 98 was dependent on claim 96 + 86) as well deletion of subject matter "wherein the initial item..." and "initial" from the claim.

Claim 101

Claim 101 merely suggests when to modify the item in traffic. For example: modify 100% of the traffic passing through, or modify 5 out of 10 packets, etc.

Art Unit: 2451

Russell teaches a way to control the network traffic and/or to control the load on the network and/or device through a probability function or parameter [0020].

Probability is an indication of likelihood of some event.

For example: In this case, assuming the probability parameter is 1 or 0.5%, the monitors apply this percentage or parameter to filter the gathered and reported traffic. In other words, based on the indicated parameter, if the collected data falls outside the parameter, the collected data may be filtered and/or dropped.

In short, the probability function helps in determining whether an event will occur or not. The event may comprise modification, collection, reporting, etc.

Applying this technique to Elnozahy and Russell will produce the feature as in claim 101.

The motivation behind this technique is explicitly recited in Russell, e.g. [0089]. In other words, it reduces the load on the network or device.

Moreover, applicant admits that "while Russell may teach determining a percentage of items for which to collect and transfer measurement data, this determination does not extend to determining whether or note to modify an item", e.g. pg. 26.

As set forth above, this determination can be applied to numerous events, such as in modifying, collecting, reporting, etc., in order to reduce the load on the network and/or device. The modification of all the items implies measurement and collection of numerous amounts of data, thus producing heavy load on the network and/or device. Therefore, it would be obvious to modify only certain percentage and/or amount of items in order to reduce the load as evidenced in Russell.

Art Unit: 2451

Claim 106

Applicant asserts that “the rejection is...is a mere conclusory statement without any evidentiary support”.

In response to applicant assertions, applicant is advised to refer to the rejection of claim 105, which discloses notifying an administrator. If one can notify administrator, one can without any doubt, notify other entities or people.

Claim 88

In the remarks, applicant asserts that “...it would not be obvious...to send a request for a revised item...”

Examiner disagrees.

It’s obvious to send a request for a revised item and/or send a request for plurality of different items when the invention is related to performance measuring of the websites. In this case, Elnozahy is measuring the performance of the websites and/or users.

Claim 91

With respect to the rejection of claim 91, it seems applicant misinterpreted the rejection and/or is simply mistaken.

First, Examiner is well-aware of how cookies in the art work. In fact, the cited document, see, e.g. <http://computer.howstuffworks.com/cookie2.htm> supports examiners findings.

In other words, website and/or webserver/host running website deposits the cookie into the client’s machine, data is tracked/stored in cookie and when next time client initiates another

Art Unit: 2451

request, the cookie is automatically sent to the associated website. A website can only receive the data it has stored on the machine. It cannot look at any other cookie, nor anything else.

In other words, website sends it own cookie and receives the same cookie. Different websites cannot access or receive cookies associated with other websites.

Claim 92

Applicant asserts that there is no image file. In fact, the cited passage fails to even include the words image or file.

Examiner disagrees.

Applicant is advised not to rely on the same terms. **Secondly, as is known in the art by one of ordinary skilled**, an image file can also be known as document, page, frame, webpage, a request for data, etc.

In column 8, lines 58-67, Elnozahy explicitly teaches sending the measurement data in cookie to the server. The host receives the cookie in a request. A request is usually for data.

Applicant is advised to refer to <http://computer.howstuffworks.com/cookie.htm> for in depth explanation of how and when the cookie is transferred to the server.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 10/23/08 was filed after the mailing date of the non-final rejection on 9/15/08. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 112

The following is a quotation of the **first paragraph of 35 U.S.C. 112**:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 86, 89, 92-97, 98-119, 129-132, 135-162, 172-175 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Independent claim 86 recites:

A method of... wherein sending a cookie to at least one of the server device or the intercepting device **occurs without a user at the client device requesting a new item.**

Initially, there is no disclosure and/or suggestions in the specification for the amendatory claim language. In fact, the specification teaches sending a cookie to the server when the user requests a new page from the server, i.e. new item, e.g. pg. 26 lines 10-19.

Independent claim 98 recites:

A method of claim...while loading the modified item: determining that the client device does not store data indicating a request time for the item...

There is simply no teaching and/or suggestions in the original specification of the fact as presented in claim 96.

At best, the specification suggests the determination of whether a cookie exists for the application, e.g. pg. 38 lines 15-26. However, the two processes are completely different.

Art Unit: 2451

Dependent claim 99 recites:

The method...prior to intercepting the item in transit, at the intercepting process: determining that the client device does not store data indicating a request time...

In addition to reasons set forth above, the original specification fails to teach and/or suggest implementing the process of the determining at the intercepting process at the intercepting device.

As such, the claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 89, 92-97, 98-119, 129-132, 135-162, 172-175 are rejected for the one or more reasons as set forth above.

35 USC § 101 - Claim Interpretation

The **computer-readable storage medium** as in the claims is interpreted as physical medium such as CD-ROM, RAM, PROM, Hard disk.

The computer-readable storage medium **does not** include any of the transmission media as disclosed in specification, pg. 51 lines 26 to pg. 52 line 2.

Art Unit: 2451

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 2451

2. Claims 87 and 130 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elnozahy et al. (hereinafter Elnozahy, U. S. Patent No. 6,792,459 B2) in view of Russell et al. (hereinafter Russell, US 2002/0099818 A1).

As per claim 87, Elnozahy discloses a method for measuring client-side performance, the method comprising the steps of:

a server process, wherein a server process is a process other than the intercepting process, executing at the server device (fig. 1 item #110, col. 5 L42-67: host server);

based on an item, generating a modified item by modifying the item to include a code (col. 4 L60 to col. 5 L8, col. 5 L17-25) which causes one or more processors on the client device to perform the steps of:

measuring performance related to a service associated with the item (col. 4 L60 to col. 5 L8, col. 5 L17-25),

performing one or more acts based on a measurement resulting from said step of measuring performance (col. 6 L10-19, fig. 1: report is sent based on measurement); and

sending the modified item to the client device (fig. 1: Instrumented web pages are sent to the user's client, col. 6 L10-12),

wherein the one or more acts based on a measurement resulting from said step of measuring performance comprise:

recording data indicating the measurement in a cookie (col. 9 L58-67); and

sending the cookie to at least one of the server device (col. 9 L58-67),

wherein measuring performance related to a service associated with the item comprises measuring a number of events, the events including at least a plurality of cursor events, focus

Art Unit: 2451

events **or** change events (i.e. clicking on a link events, col. 4 L33-59, col. 6 L10-20: certain events, col. 7 L1-46: cursor including clicking events).

However, Elnozahy does not disclose at an intercepting process executing on either an intercepting device or a server device, intercepting an item that is in transit from a server process to a client device, prior to the arrival of the item at the client device.

Russell, from the same field of endeavor explicitly discloses at an intercepting process executing on either an intercepting device or a server device, intercepting an item that is in transit from a server process to a client device, prior to the arrival of the item at the client device (pg. 7 [0081]: inserting the codes dynamically by using web server plug in as it is delivered, i.e. the plug in intercepts the item and inserts the code as it is delivered, or, by using http proxy. Proxy devices are known for its intercepting processes).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to intercept an item to modify the item at the intercepting process executing either on intercepting device or server device.

One of ordinary skilled in the art would have been motivated because it would have allowed modifying the items dynamically (Russell: pg. 7 [0081]).

As per claim 130, it does not teach or further define over the limitations in claim 87. Therefore, claim 130 is rejected for the same reasons as set forth in claim 87.

Art Unit: 2451

3. Claims 86, 88-89, 92, 94-108, 111-116, 118-119, 129, 131-132, 135, 137-151, 154-159, 161-162 and 172-175 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elnozahy et al. (hereinafter Elnozahy, U. S. Patent No. 6,792,459 B2) in view of Russell et al. (hereinafter Russell, US 2002/0099818 A1), and further in view Peiffer et al. (hereinafter Peiffer, US 6,834,297 B1).

As per claim 86, Elnozahy discloses a method for measuring client-side performance, the method comprising the steps of:

a server process, wherein a server process is a process other than the intercepting process, executing at the server device (fig. 1 item #110, col. 5 L42-67: host server);

based on an item, generating a modified item by modifying the item to include a code (col. 4 L60 to col. 5 L8, col. 5 L17-25) which causes one or more processors on the client device to perform the steps of:

measuring performance related to a service associated with the item (col. 4 L60 to col. 5 L8, col. 5 L17-25),

performing one or more acts based on a measurement resulting from said step of measuring performance (col. 6 L10-19, fig. 1: report is sent based on measurement); and

sending the modified item to the client device (fig. 1: Instrumented web pages are sent to the user's client, col. 6 L10-12),

wherein the one or more acts based on a measurement resulting from said step of measuring performance comprise:

recording data indicating the measurement in a cookie (col. 9 L58-67); and

sending the cookie to at least one of the server device (col. 9 L58-67).

Art Unit: 2451

However, Elnozahy does not disclose at an intercepting process executing on either an intercepting device or a server device, intercepting an item that is in transit from a server process to a client device, prior to the arrival of the item at the client device and the process wherein sending the cookie to at least one of the server or the intercepting device occurs without a user at the client device requesting a new item (According to applicant, this is done through automatic requests).

Russell, from the same field of endeavor explicitly discloses at an intercepting process executing on either an intercepting device or a server device, intercepting an item that is in transit from a server process to a client device, prior to the arrival of the item at the client device (pg. 7 [0081]: inserting the codes dynamically by using web server plug in as it is delivered, i.e. the plug in intercepts the item and inserts the code as it is delivered, or, by using http proxy. Proxy devices are known for its intercepting processes).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to intercept an item to modify the item at the intercepting process executing either on intercepting device or server device.

One of ordinary skilled in the art would have been motivated because it would have allowed modifying the items dynamically (Russell: pg. 7 [0081]).

However, Elnozahy-Russell does not disclose the process wherein sending the cookie to at least one of the server or the intercepting device occurs without a user at the client device requesting a new item (According to applicant, this is done through automatic requests).

Art Unit: 2451

Peiffer discloses a mechanism, i.e. modifying a webpage to instruct the browser to automatically request another webpage (fig. 8 item #136, col. 10 L20-47).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy and Russell in view of Peiffer in order to send the cookie without user requesting a new item.

One of ordinary skilled in the art would have been motivated because it would have enabled measurement and reporting the measured data with respect to the original link automatically (Elnozahy: col. 5 L1-25).

As per claim 88, Elnozahy discloses a method for measuring client-side performance, the method comprising the steps of:

a server process, wherein a server process is a process other than the intercepting process, executing at the server device (fig. 1 item #110, col. 5 L42-67: host server);

based on an item, generating a modified item by modifying the item to include a code (col. 4 L60 to col. 5 L8, col. 5 L17-25) which causes one or more processors on the client device to perform the steps of:

measuring performance related to a service associated with the item (col. 4 L60 to col. 5 L8, col. 5 L17-25),

performing one or more acts based on a measurement resulting from said step of measuring performance (col. 6 L10-19, fig. 1: report is sent based on measurement); and

sending the modified item to the client device (fig. 1: Instrumented web pages are sent to the user's client, col. 6 L10-12),

Art Unit: 2451

wherein the one or more acts based on a measurement resulting from said step of measuring performance comprise:

recording data indicating the measurement in a cookie (col. 9 L58-67, col. 8 L58-67); and sending the cookie to at least one of the server device (col. 9 L58-67, col. 8 L58-67),

However, Elnozahy does not disclose at an intercepting process executing on either an intercepting device or a server device, intercepting an item that is in transit from a server process to a client device, prior to the arrival of the item at the client device and the process of sending a request to either the server device or intercepting device for a revised item and receiving the revised item.

Russell, from the same field of endeavor explicitly discloses at an intercepting process executing on either an intercepting device or a server device, intercepting an item that is in transit from a server process to a client device, prior to the arrival of the item at the client device (pg. 7 [0081]: inserting the codes dynamically by using web server plug in as it is delivered, i.e. the plug in intercepts the item and inserts the code as it is delivered, or, by using http proxy. Proxy devices are known for its intercepting processes).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to intercept an item to modify the item at the intercepting process executing either on intercepting device or server device.

One of ordinary skilled in the art would have been motivated because it would have allowed modifying the items dynamically (Russell: pg. 7 [0081]).

However, Elnozahy-Russell does not disclose the process the process of sending a request to either the server device or intercepting device for a revised item and receiving the revised item.

Peiffer discloses the process the process of sending a request to either the server device or intercepting device for a revised item and receiving the revised item (fig. 8 and col. 10 L20-47: sending and receiving request for original/smaller version).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy and Russell in view of Peiffer in order to send and receive the revised item.

One of ordinary skilled in the art would have been motivated because it would have enabled measurement and reporting the measured data for various webpages (Elnozahy: col. 5 L1-25).

As per claim 89, Elnozahy discloses the method wherein the threshold of minimum performance is associated with a maximum acceptable response time (col. 9 L27-67).

As per claim 92, Elnozahy discloses the method wherein the one or more acts based on a measurement resulting from said step of measuring performance further comprises requesting an image file from one of the intercepting device or the server device and wherein sending the cookie to at least one of the server or intercepting device occurs as a consequence of requesting the image file from one of the intercepting device or the server device (col. 9 L27-43, col. 8 L58-67).

As per claim 94, Elnozahy discloses the method wherein the code causes performance of the act of requesting an image file from one of the intercepting or server device in response to

Art Unit: 2451

detecting that the item is completely loaded in a client process at the client device (fig. 5, col. 7 L1-46).

As per claim 95, Elnozahy discloses the method wherein the one or more acts based on a measurement resulting from said step of measuring performance comprise reporting the measured performance to one of the server device or the intercepting device (col. 7 L30-45, col. 8 L15-27, L5—61).

However, Elnozahy does not disclose the process of correlating the measured performance at the client device with one or more metrics of server side performance.

Russell discloses the process of correlating the measured performance at the client device with the one or more metrics of server side performance (pg. 17 [0114-0116]).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to correlate the measured performance with one or more metrics of server side performance.

One of ordinary skilled in the art would have been motivated because it would have determined a system/network latency (Russell: pg. 17 [0114], [0116]).

As per claim 96, Elnozahy discloses the method further comprising based on the initial item, generating a modified initial item by modifying the initial item to include initial code which causes one or more processors on the client device perform the step of recording a time at which the client device requests the item, and sending the modified initial to the client device (col. 5 L9-41, col. 7 L1-30).

Art Unit: 2451

However, Elnozahy does not disclose the process wherein prior to intercepting the item in transit, at the intercepting process, intercepting an initial item in transit from the server process to the client device, prior to the arrival of the initial item at the client device.

Russell, from the same field of endeavor explicitly discloses at an intercepting process executing on either an intercepting device or a server device, intercepting an item that is in transit from a server process to a client device, prior to the arrival of the item at the client device (pg. 7 [0081]: inserting the codes dynamically by using web server plug in as it is delivered, i.e. the plug in intercepts the item and inserts the code as it is delivered, or, by using http proxy. Proxy devices are known for its intercepting processes).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to intercept an initial item prior to intercepting the item in transit to modify the initial item.

One of ordinary skilled in the art would have been motivated in order to measure the response times of the items (Elnozahy: col. 5 L9-41).

As per claim 97, Elnozahy discloses the method wherein recording the time at which the client device requests the item occurs in response to a user at the client device selecting a control that links to the item (col. 7 L1-30).

As per claim 98, Elnozahy discloses a method for measuring client-side performance, the method comprising the steps of:

a server process, wherein a server process is a process other than the intercepting process, executing at the server device (fig. 1 item #110, col. 5 L42-67: host server);

Art Unit: 2451

based on an item, generating a modified item by modifying the item to include a code (col. 4 L60 to col. 5 L8, col. 5 L17-25) which causes one or more processors on the client device to perform the steps of:

measuring performance related to a service associated with the item (col. 4 L60 to col. 5 L8, col. 5 L17-25),

performing one or more acts based on a measurement resulting from said step of measuring performance (col. 6 L10-19, fig. 1: report is sent based on measurement); and

sending the modified item to the client device (fig. 1: Instrumented web pages are sent to the user's client, col. 6 L10-12),

wherein the one or more acts based on a measurement resulting from said step of measuring performance comprise:

recording data indicating the measurement in a cookie (col. 9 L58-67).

However, Elnozahy does not disclose at an intercepting process executing on either an intercepting device or a server device, intercepting an item that is in transit from a server process to a client device, prior to the arrival of the item at the client device and the process wherein while loading the modified item:

Determining that the client device does not store data indicating a request time for the item, the request time being a time at which the item was requested; in response to determining that the client device does not store data indicating a request time for the item, constructing a page to be loaded at the client device in place of the modified item, said page being different than the modified item, wherein the page includes code that causes the one or more processors

Art Unit: 2451

on the client device to perform the steps of automatically requesting the item from the one of the server or intercepting device.

Russell, from the same field of endeavor explicitly discloses at an intercepting process executing on either an intercepting device or a server device, intercepting an item that is in transit from a server process to a client device, prior to the arrival of the item at the client device (pg. 7 [0081]: inserting the codes dynamically by using web server plug in as it is delivered, i.e. the plug in intercepts the item and inserts the code as it is delivered, or, by using http proxy. Proxy devices are known for its intercepting processes) and the process determining that the client device does not store data indicating a request time for the initial item (pg. 7 [0085]).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to intercept an item to modify the item at the intercepting process executing either on intercepting device or server device and determine whether the client device stores data indicating a request time for the item.

One of ordinary skilled in the art would have been motivated because it would have allowed modifying the items dynamically (Russell: pg. 7 [0081]), and enabled storing the measurement data.

However, Elnozahy-Russell does not disclose the process of constructing a page to be loaded at the client device in place of the modified item, said page being different than the modified item, wherein the page includes code that causes the one or more processors on the client device to perform the steps of automatically requesting the item from the one of the server or intercepting device.

Art Unit: 2451

Peiffer discloses a mechanism of constructing a page to loaded at the client device instead of original page, wherein the page includes a code that causes one or more processors on the client device to automatically request the original item from the server (fig. 8 item #136, col. 10 L20-47: i.e. modifying a webpage to instruct the browser to automatically request another webpage).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy and Russell in view of Peiffer in order to construct the page to be loaded with a code to instruct the browser to automatically request the original page.

One of ordinary skilled in the art would have been motivated because it would have enabled measurement and reporting the measured data with respect to the original link automatically (Elnozahy: col. 5 L1-25).

As per claim 99, Elnozahy discloses the method wherein the initial item is the item, and wherein the method further comprises, wherein modifying the initial item comprises replacing at least some of the content of the initial item with place-holding content (col. 5 L1-41: instrumenting with uninstrumented page), wherein the modified initial code further causes the one or more processors on the client device to perform the steps of: recording data indicating a time at which the item was requested (col. 5 L9-25, col. 8 L55-57, col. 5 L9-41, col. 7 L1-30: code that records time).

However, Elnozahy does not disclose the process of prior to intercepting the item in transit, at the intercepting process, determining that the client device does not store data

Art Unit: 2451

indicating a request time for the initial item and automatically requesting the item from one of the server or intercepting device.

Russell discloses the process of determining that the client device does not store data indicating a request time for the initial item (pg. 7 [0085]).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to determine that the client device does not store data indicating a request time for the initial item while loading the modified initial item.

One of ordinary skilled in the art would have been motivated in order to enable storing the measurement data.

However, Elnozahy in view of Russell does not disclose automatically requesting the item from one of the server or intercepting device.

Peiffer discloses the process of modifying the item comprising replacing at least some of the content of the initial item with place-holding content which causes automatically requesting the item from one of the server (fig. 8 item #136, col. 10 L20-47).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy and Russell in view of Peiffer in order to automatically request the item from the one of the server.

One of ordinary skilled in the art would have been motivated because it would have enabled measurement and reporting the measured data with respect to the original link (Elnozahy: col. 5 L1-25).

Art Unit: 2451

As per claim 100, Elnozahy does not disclose the process of determining a percentage of total items sent to the client process, determining based upon the percentage of total items sent to the client process that one of the item or the initial item is to be modified, and wherein modifying the item occurs in response to determining, based upon the percentage of total items send to the client process.

Russell discloses a technique, i.e. applying probability function in collecting and transferring the measurement data (pg. 9 [0089]: i.e. Russell discloses a technique, wherein the technique determines the percentage of total items and applying the desired percentage of the total items in collecting and transferring the measurement data).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to modify only a desired percentage of the total items.

One of ordinary skilled in the art would have been motivated because it would have reduced the processing load on the data center, servers and/or intercepting devices (Russell: pg. 9 [0089]).

As per claim 102, Elnozahy discloses the method wherein the item is an item in a frameset and the steps of measuring performance related to a service associated with the item and performing one or more acts based on a measurement resulting from said step of measuring performance occur in response to determining that all other items in the frameset have been loaded (col. 7 L1-30, col. 9 L1-26; Russell: pg. 15 [0099], [0104], [0108], [0109]).

As per claim 103, Elnozahy discloses the method further comprising the steps of receiving, over a network, data indicating the measurement from the client device (col. 8 L15-27,

Art Unit: 2451

L58-67); determining whether the data indicates performance has fallen below a threshold (col. 9 L44-54, col. 2 L61 to col. 3 L7); and if the data indicates performance has fallen below the threshold, then sending a notification message (col. 9 L44-54, col. 2 L61 to col. 3 L7; Russell: pg. 7 [0081], pg. 9 [0088]).

As per claim 104, Elnozahy discloses the method wherein the step of performing one or more acts based on the measurement further comprises determining whether the measurement indicates performance has fallen below a threshold (col. 9 L44-54, col. 2 L61 to col. 3 L7); and if the data indicates performance has fallen below the threshold, then sending a notification message (col. 9 L44-54, col. 2 L61 to col. 3 L7).

As per claim 105, Elnozahy discloses the method wherein said step of sending a notification message comprising sending the notification message to an administrator for a server device associated with said service (fig. 1 item #109, 110 and col. 9 L1-67, col. 6 L10-19).

As per claim 106, Elnozahy does not disclose the method wherein step of sending notification message comprises sending the notification message to a user of the client process.

But, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Elnozahy in order to notify the user of the client process since Elnozahy teaches notifying the host server and/or verifying agent's server.

One of ordinary skill in the art would have been motivated in order to notify the user of the perceived response times.

As per claim 107, Elnozahy discloses the method wherein the measurement is a client response time between a first time when a user of the client process selects an item on a first web

Art Unit: 2451

page rendered on a display of the client device and a second time when a second web page is fully rendered on the display of the client device (fig. 5, col. 7 L1-46).

As per claim 108, Elnozahy discloses the method wherein processing of the code by the one or more processors at the client device causes collecting ancillary information relating to one or more components of the client process that participate in obtaining the service from the application program and the at the client device performing one or more acts based on the measurement includes correlating the measurement with the ancillary information (fig. 1 item #195, fig. 3 item #260, item #250, fig. 5 item #565 and fig. 6 item #670).

As per claim 111, Elnozahy discloses the method wherein the item to be sent to the client process is stored in a cache before the item is sent to the client process (fig. 1 item #115, 131-133); said step of intercepting the item comprises accessing the item in the cache and said step of sending the modified item to the client process comprises replacing the item in cache with the modified item (fig. 1 and col. 6 L1-10).

As per claim 112, Elnozahy discloses the method wherein the cache is on the server device (fig. 1 item #110, 115 and col. 6 L1-10).

As per claim 113, Elnozahy does not disclose the method wherein the cache is on a proxy server for the client process.

Russell explicitly discloses a proxy server for the client process (pg. 7 [0081]).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to implement a cache on a proxy server.

One of ordinary skilled in the art would have been motivated because a proxy server improves the network performance by reducing the response times.

As per claim 114, Elnozahy discloses the method wherein the item includes hypertext markup language (HTML) statements (col. 2 L25-36, fig. 1 item #160, col. 4 L20-32).

As per claim 115, Elnozahy discloses the method wherein the code comprises javascript statements (col. 4 L20-59).

As per claim 116, Elnozahy discloses the method wherein the code comprises a Java applet (col. 2 L25-36).

As per claim 118, Elnozahy discloses the method wherein the client device comprises a web browser at which the item is received and at which the code is executed (col. 2 L25-36, fig. 1 item #160, col. 4 L20-32).

As per claim 119, Elnozahy discloses the method further comprising the steps of receiving, over a network, data indicating the measurement from the client device (col. 8 L15-27, L58-67); determining whether the data indicates performance problem, the performance problem being that performance has fallen below a threshold (col. 9 L44-54, col. 2 L61 to col. 3 L7); and if the data indicates performance has fallen below the threshold, then sending a notification message (col. 9 L44-54, col. 2 L61 to col. 3 L7; Russell: pg. 7 [0081], pg. 9 [0088]).

However, Elnozahy does not disclose the process wherein if the data indicates performance has fallen below the threshold, then, based at least on the data and one or more metrics of server-side performance, determining whether the performance problem is attributable to the server device, or one of the client device and a network connected to the client device to the server device.

Art Unit: 2451

Russell suggests the process wherein based at least on the data and one or more metrics of server-side performance, determining whether the performance problem is attributable to the server device, or one of the client device and a network connected to the client device to the server device (pg. 9 [0088], pg. 17 [0114-0116]).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in view of Russell in order to determine the performance problem based on the client side data and server side metrics.

One of ordinary skilled in the art would have been motivated because it would have determined condition of a distributed application, system and/or server (Russell: pg. 9 [0087], pg. 17 [0114, 0117]).

As per claim 172, Elnozahy-Russell-Peiffer discloses the method further comprising, at the intercepting process, after sending the modified item: sending a second item to the client device, wherein the second item is the item, wherein the second item is responsive to the client device based on the code in said page, performing the step of automatically requesting the item from one of the server or the intercepting device (Peiffer: fig. 8 item #136, col. 10 L20-47: i.e. modifying a webpage to instruct the browser to automatically request another webpage and sending and receiving the another page); wherein the second item includes code which causes one or more processors on the client device to perform the steps of based on the recorded time, measuring performance related to a service associated with the item; and performing one or more acts based on a measurement resulting from said step of measuring performance (Elnozahy: col. 4 L60 to col. 5 L8, col. 5 L17-25, col. 6 L10-19, fig. 1: report is sent based on measurement).

Art Unit: 2451

As per claim 173, Elnozahy-Russell-Peiffer discloses the method wherein determining that the client device does not store data indicating a request time for the initial item comprises determining that the client device does not store a cookie for an application at the server device from which the initial item originated and in which the data including the request time for the initial item is stored (Russell: pg. 7 [0085]: checking for the existence/presence of the server cookie).

As per claims 101, 129, 131-132, 135, 137-151, 154-159, 161-162 and 174-175, they do not teach or further define over the limitations in claims 86, 88-89, 92, 94-100, 102-108, 111-116, 118-119 and 172-173. Therefore, claims 101, 129, 131-132, 135, 137-151, 154-159, 161-162 and 174-175 are rejected for the same reasons as set forth in claims 86, 88-89, 92, 94-100, 102-108, 111-116, 118-119 and 172-173.

4. Claims 109, 110, 117, 152-153 and 160 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elnozahy et al. (hereinafter Elnozahy, U. S. Patent No. 6,792,459 B2) in view of Russell et al. (hereinafter Russell, US 2002/0099818 A1), in view Peiffer et al. (hereinafter Peiffer, US 6,834,297 B1), and further in view of Guthrie (U. S. Patent No. 6,266,681 B1).

As per claim 109, Elnozahy and Russell does not disclose the method further comprising the steps of determining a type associated with the item produced by the application and determining whether to perform said step of modifying the item based on the type of the item.

Guthrie discloses the process of intercepting the item and determining the type associated with the item and determining whether to perform modification of the item based on the type of item (col. 6 L25-40, col. 10 L52 to col. 11 L6).

Art Unit: 2451

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to incorporate the teaching of Guthrie as stated above with Elnozahy and Russell in order to make a determination whether to perform the process of modifying the item based on the type associated with the item.

One of ordinary skilled in the art would have been motivated because it would have determined what type of code the clients browser would support and what code to inject into the item or the document (Guthrie, col. 11 L1-6).

As per claim 110, Elnozahy in view of Russell does not disclose the process of determining a unique reference associated with the item and determining whether to perform said step of modifying the item based on whether the unique reference matches a particular reference, after intercepting the item and before modifying the item.

Guthrie discloses the process of determining the unique reference associated with the item and determining whether to perform the step of modifying the item based on whether the unique reference matches a particular reference (col. 6 L25-40, col. 10 L52 to col. 11 L6).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to incorporate the teaching of Guthrie as stated above with Elnozahy and Mortensen, in order to make a determination of modifying the item based on a unique reference.

One of ordinary skilled in the art would have been motivated because of the same reasons as set forth in claim 109.

As per claim 117, Elnozahy in view of Russell does not disclose the process wherein the code comprises an ActiveX module.

Art Unit: 2451

Guthrie explicitly discloses the process of intercepting the HTML documents and modifying the html documents to include a code, wherein the code includes ActiveX component (col. 11 L1-49).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to incorporate the teaching of Guthrie with Elnozahy in order to include ActiveX modules.

One of ordinary skilled in the art would have been motivated so that the code can be inserted in a form of ActiveX component into the HTML document (Guthrie, col. 11 L1-32, col. 6 L41-67).

As per claims 152-153 and 160, they do not teach or further define over the limitations in claims 109, 110 and 117. Therefore, claims 152-153 and 160 are rejected for the same reasons as set forth in claims 109, 110 and 117.

5. Claims 93 and 136 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elnozahy et al. (hereinafter Elnozahy, U. S. Patent No. 6,792,459 B2) in view of Russell et al. (hereinafter Russell, US 2002/0099818 A1), in view Peiffer et al. (hereinafter Peiffer, US 6,834,297 B1), and further in view of Antcliff et al. (hereinafter Antcliff, US 6,081,835).

As per claim 93, Elnozahy-Russell-Peiffer does not disclose the method wherein the image file is an image file with no data.

Antcliff discloses sending/receiving a dummy file (fig. 4 item #s34c, col. 5 L7-36).

Art Unit: 2451

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Elnozahy in order to request an image file with no data and/or dummy file.

One of ordinary skilled in the art would have been motivated so that the cookie with the measurement data can be sent to the server device.

As per claim 136, it does not teach or further define over the limitations in claim 93. Therefore, claim 136 is rejected for the same reasons as set forth in claim 93.

Additional References

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Housel, III et al., US 6,003,087: discloses server-side Interceptor module, See Fig. 2.
- b. Barrick, Jr. et al., US 6,006,260: Evaluating service to a user over the Internet.
- c. Rosborough, U. S. Patent No. 5,764,912: Method and Apparatus for Determining Response time in Computer Applications.
- d. Yee et al., U. S. Patent No. 5,872,976: Client-based system for monitoring the Performance of Application programs.
- e. Abbott et al., U. S. Patent No. 6,314,463 B1: Method and System for Measuring Queue Length and Delay.
- f. Elnozahy et al., Pub. No.: US 2002/0112049 A1: Measuring Response Time for a Computer accessing Information from a network.

Conclusion

The teachings of the prior art should not be restricted and/or limited to the citations by columns and line numbers, as specified in the rejection. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

In the case of amendments, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and support, for ascertaining the metes and bounds of the claimed invention.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 2451

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAMAL B. DIVECHA whose telephone number is (571)272-5863. The examiner can normally be reached on Increased Flex Work Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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